IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3771 OF 2006

Raghunath Jagannath Bhondivale .. Applicant

Versus

The State of Maharashtra .. Respondent

Ms.Mhaispurkar i/b. M.K.Kocharekar for applicant

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th October 2006.

P.C.

. At the request of Ms.Mhaispurkar, learned Advocate for applicant, present application is allowed to be withdrawn.

2. At this stage Ms.Mhaispurkar, after taking instructions, makes a statement that the applicant would surrender before the I.O. on 27th October 2006. In the light of this statement made by Ms.Mhaispurkar, after taking instructions, it is directed that applicant would not be arrested till 27th October 2006. Needless to state that if he does not surrender as undertaken, in addition to initiating proceedings for breach of this undertaking, it would be open for investigating authority to proceed in accordance with law. All concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J).

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. At 2.00 p.m. the matter is again mentioned by Ms.Mhaispurkar and she states that

erroneously she made the statement about withdrawal of the application. She submits that an order be passed on merits. These are not satisfactory state of affairs. The matter was argued and when I was inclined to reject the application, a request for withdrawal was made which was granted. Be that as it may, the order passed above in the morning session, is recalled.

2. I have perused the application and the annexures thereto. The statement of complainant Prakash is also supported by Contractor Pandurang Dhumal. In such circumstances custodial interrogation would be necessary for finding out as to whether the applicant had any right, title or interest in the properties which he made the subject matter of his complaint or that the said persons had come in contact with him otherwise. Similarly, with regard to the plot being developed by the complainant, it would be necessary to investigate as to whether the

complainant was approached by the present applicant and upon denial of development rights he made the demand and administered the threats. All such matters are essentially of custodial interrogation. In such circumstances, it is not possible to accede to the submissions of Ms.Mhaispurkar. In my view, the requirement of Section 438 of Cr.P.C. is not satisfied in this case. It is not possible to hold that the complaint is false, malafide or not disclosing any offence.

3. Application for anticipatory is, therefore, rejected. At the request of Ms.Mhaispurkar, the order passed on 13th October 2006 directing that the application should not be arrested to continue for a further period of 10 days from today.

(S.C.Dharmadhikari, J)